UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF MICHIGAN

IN RE:	
James Gerard Stelter	CASE NO.: SG05-18979 Debtor(s)/
NOTICE TO CREDIT	ORS AND OTHER PARTIES IN INTEREST
	ON TO SELL REAL PROPERTY OF THE SERVANCY DRIVE NE, ADA, MICHIGAN)
may be affected. You should read attorney. (If you do not have an at If you want the court to cons for July 19, 2006 at 10:00 a.m. at the ONE DIVISION N.W., GRAND IT You or your attorney may wis should also be served upon the party refer to Administrative Order 200 2005, for practices and procedures If you or your attorney do no	these papers carefully and discuss them with your ttorney, you may wish to consult one.) ider your views on this matter, attend the hearing scheduled to United States Bankruptcy Court, COURTROOM A, RAPIDS, MICHIGAN ash to file a response explaining your position. A copy who has filed the motion and to his/her attorney. Please 4-06 (Mandatory Electronic Filing), effective January 1, as for filing pleadings with the court. It take these steps, the court may decide that you do not on or objection and may enter an order granting that relief.
Court returned to Timothy Hillegonds, Esq.	for service upon the matrix. Court to serve Buyer's List.
<u>June 14, 2006</u> date	DANIEL M. LAVILLE CLERK OF BANKRUPTCY COURT
ANN	By: Kathleen M. Trapp, Deputy Clerk

NOTICE IS HEREBY GIVEN that the court may, in its discretion, orally continue or adjourn the above hearing on the record in open court. If this occurs, parties in interest will not be given further written notice of the continued or adjourned hearing. If an entity is not present at the originally scheduled hearing, information regarding the time, date and place of an orally continued or adjourned hearing may be obtained at the Clerk's office from the docket.

UNITED STATES BANKRUPTCY COURT

FOR THE WESTERN DISTRICT OF MICHIGAN

IN RE:	
JAMES GERARD STELTER,	Case No. 05-18979 jcs
	Chapter 7
Debtor.	Honorable Jo Ann C. Stevenson
/	Filed Chapter 13: October 14, 2005
	Converted to Chapter 7: November 17, 2005

MOTION TO SELL REAL PROPERTY OF THE ESTATE (8700 CONSERVANCY DRIVE NE, ADA, MICHIGAN)

NOW COMES John A. Porter, Chapter 7 Trustee (the "Trustee"), through his attorneys, and moves the Court as follows:

- 1. On October 14, 2005, Debtor filed a voluntary petition under Chapter 13 of the Bankruptcy Code. The Chapter 13 case was converted to a case under Chapter 7 on November 17, 2005.
- 2. The Trustee was appointed, qualified and elected as Chapter 7 Trustee in this case.
- 3. The assets of the bankruptcy estate being administered by the Trustee include the real property commonly known as 8700 Conservancy Drive N.E., Ada, Michigan 49301 (the "**Property**"). The property is legally described as:
 - Lot(s) 25, The Conservancy No. 3, according to the recorded plat thereof, as recorded in Liber 118 of Plats, Page 23.

Tax Parcel No. 41-15-13-302-010

- 4. Pursuant to the attached West Michigan Regional Purchase Agreement dated May 31, 2006 (the "Purchase Agreement"), the Trustee has agreed to sell the Property to Peter Westermann or his assigns (the "Buver").
- 5. The purchase price for the Property is \$540,000 (the "Purchase Price"). The Purchase Price shall be paid in cash at closing. The Trustee believes that the Purchase Price is the minimum fair market value of the Property based on the opinion of the real estate agent involved in the sale.

- 6. The real estate agent involved in this sale is Prudential Preferred, Realtors. The commission is 7% of the gross sales price of the Property.
 - 7. The Buyer is disinterested.
- 8. To the best of the Trustee's knowledge, the following are the only outstanding interests in the Property:
 - (a) Rights or claims of parties in possession not shown by the public records.
 - (b) Easements, or claims of easements, not shown by the public records.
 - (c) Any lien, or a right to a lien, for services, labor or material furnished, imposed by law.
 - (d) Any claim by the Debtor to an interest in the Property, including but not limited to any claim of an exemption in the Property.
 - (e) Real estate taxes and assessments, including special assessments, which constitute a lien on the Property.
 - (f) Easements and building and use restrictions of record.
 - (g) Interest of Michelle M. Stelter, the spouse of the Debtor, as a joint owner of the Property.
 - (h) Mortgage held by National City Mortgage Services Co. dated October 29, 2004, recorded January 10, 2005, as instrument number 20050110-0003078, Kent County Records, in the original principal amount of \$341,000. Upon information and belief, the balance owed on this mortgage is approximately \$302,000.
 - (i) Mortgage held by National City Bank dated October 29, 2004, recorded January 10, 2005, as instrument number 20050110-0003079, Kent County Records. Upon information and belief, the balance owed on this mortgage is approximately \$45,000.
 - (j) Notice of lis pendens dated June 1, 2005, recorded June 1, 2005, in instrument number 20050601-0064140, Kent County Records, reflecting the claim of Heather Hills Limited Partnership, a Michigan limited partnership, against Debtor and Michelle M. Stelter, case number 05-05477-CK.

- (k) Judgment or order in the matter of Heather Hills Limited Partnership vs James G. Stelter and Michelle M. Stelter, case number 05-05477-CK, State of Michigan, in the Circuit Court for the County of Kent, recorded August 19, 2005, in instrument number 20050819-0098223, Kent County Records.
- (l) Construction lien filed by TJM Unique Living, Inc., in the amount of \$50,447.77, recorded on August 30, 2005, in instrument number 20050830-0103657, Kent County Records.
- 9. The following creditors would appear to have joint claims against both the Debtor and his spouse, Michelle M. Stelter:

Name Amount
National City Bank \$9,000.69
Heather Hills Limited Partnership \$1,820,548.50
Kent County Treasurer \$7,788.11 (if paid in April, 2006)

- 10. The Trustee has a right to sell both the Debtor's and his spouse's interest in the Property to pay joint creditors. *In Re Trickett*, 14 B.R. 85 (W.D. Mich. 1981).
- 11. The Trustee requests that the Court approve sale of the Property pursuant to the terms of the Purchase Agreement, subject to the following conditions:
 - (a) The Trustee is agreeing to the provisions of the Purchase Agreement solely as trustee in this bankruptcy case, and not individually.
 - (b) Title to the Property will be transferred by the Trustee's execution of a trustee's deed.
 - (c) Sale of the Property, including all improvements and fixtures, shall be made on an "AS IS, WHERE IS" basis as of the date of closing of the sale, without representation or warranty, express or implied of any kind, nature, or description, including without limitation any warranty by description or of merchantability, habitability, usability, or of fitness for any purpose. The Trustee shall not be required to inspect or test or report on the condition of the Property, or the operability of the Property, or the existence of any defects in the Property.
 - (d) The sale will be subject to the right of any other qualified bidder to submit a higher and better bid at the hearing on approval of the sale to the Buyer. As a condition to acceptance of a competing bid, the bidder must deposit with the Trustee an earnest money deposit of \$2,500 in certified funds. Any person interested in submitting a higher and better bid may attend the hearing on approval of the sale to the Buyer, at which time all other bids will be received.

The Trustee reserves the right to recommend confirmation by the Court of the bid determined by the Trustee to be the highest and best bid.

- (e) Any competing bid must be on the same general terms and conditions of the Purchase Agreement. Any competing bidder will be required to execute (upon entry of an order approving any sale to such bidder) an agreement in substantially the form of the Purchase Agreement.
- (f) Any competing bid for the Property must be for at least \$1,000 more than the prior competing bid.
- (g) It is preferable, but not required, that written financing commitments accompany any competing offer for which financing is required. At a minimum, any competing bidder must provide sufficient information to assure the Trustee that the competing bidder is qualified to bid.
- (h) The Trustee may accept one or more back-up offers. The Trustee shall have no obligation to close a back-up offer accepted by him unless the Property is not sold pursuant to the previous offer or offers.
- (i) The Trustee assumes no obligation to inspect, test or report on the condition of the Property or the usability of the Property or the existence of any possible defect in the Property.
- (j) Any person who desires additional information regarding the Property offered for sale should contact either:

John A. Porter 6059 Cannon Highlands Dr. NE Belmont, Michigan 49306 Telephone: (616) 874-4800 or

Timothy Hillegonds Warner Norcross & Judd LLP 900 Fifth Third Center, 111 Lyon Street NW Grand Rapids, MI 49503 Telephone: (616) 752-2132

(k) Pursuant to 11 USC §363(f), the Court is requested to order sale of the Property free and clear of all of the interests disclosed in paragraph 8 above other than easements and building and use restrictions of record (the "Claims"). All Claims shall attach to the proceeds realized from the sale of the Property with the same validity and in the same order as against the estate's interest in the Property.

- (l) The Trustee requests that he be authorized to pay and disburse funds to facilitate closing and the transfer of the Property to the successful bidder, including but not limited to real estate taxes, mortgages and closing costs, and that the Trustee be authorized to retain a title insurance company to make disbursements on his behalf.
- (m) The Trustee shall have the right to refuse to recommend confirmation of any bid which does not conform to the provisions of this Motion.
- (n) The Trustee will not agree to pay any breakup fee to an unsuccessful bidder or to reimburse any unsuccessful bidder for costs and expenses incurred in connection with developing an offer to purchase the Property.
- (o) The Trustee shall have no obligation to sell the Property to any person or entity unless proceeds received from sale of the Property are sufficient to pay all valid and non-avoidable liens and encumbrances against the Property, the allowed exemptions (if any) claimed by the Debtor, and all closing costs (including but not limited to real estate commissions).
- (p) The Trustee requests that the order of this Court confirming the sale take immediate effect, and that the ten (10) day stay provided by Fed. R. Bankr. P. 6004(g) not apply so that the sale may close immediately following entry of the order.
- 12. The Trustee believes that it is in the best interest of this estate that he be authorized to sell the Property upon the terms and conditions set forth above.
- 13. Sale of the Property to the Buyer will be of a benefit to the estate, as net sales proceeds after payment of taxes, liens and encumbrances, closing costs and the interest (if any) of the Debtor's spouse, will be available at a minimum to pay joint claims in this estate on a prorata basis.

WHEREFORE, the Trustee requests that this Court (a) hold a hearing on the interest of the Debtor and his spouse in the Property, (b) authorize sale of the Property on the terms of this Motion, and (c) grant the Trustee such other, further or different relief as is just and equitable.

Dated: June 13, 2006

WARNER NORCROSS & JUDD LLP Attorneys for Trustee

By: /s/ Timothy Hillegonds

Timothy Hillegonds (P25555)
900 Fifth Third Center, 111 Lyon St NW
Grand Rapids, MI 49503
(616) 752-2132
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West Michigan Regional Perchane Agreement Page 4 of 6 The Buyer has also elected to inspect whether the property complies with applicable codes and local ordinances. In the event of VA financing. Seller will pay for the inspection for termities and other wood destroying insects. All inspections will be completed within ten (19) days after Seller's acceptance of Buyer's offer or Buyer's acceptance of any counteroffer, as the case may be. If the inspection reports are not acceptable to Buyer, the Buyer may, within the above referenced period, by written notice to Seller, either terminate this Agreement and receive a refund of Suyer's good-faith deposit, or make a written proposal to Saller with respect to the unsatisfactory conditions described in the reports. If the Suyer faits to make a written proposal within the above referenced time period, then Suyer continuous cascrose in the reports. If the outer laws to make a written proposal warm, the above returning arise period, then outer outer currently will be decread to have accepted the results of the inspection reports without repairs or connections and will proceed to closing according to the terms and conditions of this Agreement. Seller may negotiate with Buyer or, by written notice to Buyer, accept Buyer's proposal or terminate this Agreement. Faiture of the Seller to respond or to arrive at a mutually agreeable resolution within three (3) days after Seller's receipt of Buyer's proposal shall result in a lemination of this Agreement and a return of any applicable Buyer agrees that Buyer is not miving on any management or statement made by Softer or any roal estate salesquirage (whether intermorally or negligerally) regarding any expect of the premises or this sale transaction, except as may be expressly set form in this Agreement, a written amendment to this Agreement, or a disclosure statement separately signed by the Seller. Accordingly, if Buyer chanses no inspections, falls to complete improclosure or authority or solitations gradually. Tuyon agrees to score the source or an authority or solitation or solitation or solitation. and the proceeding sometime manassive provided in the documents specified in the preceding sometime. Exceptions: 16. Name Protection Plan: Buyer and Saller have been informed that home protection plans may be evaluated. Such plans may provide There provides the course of t क्षणिक मार्थ्यक मार्थ्य क्षणिक हरता. अस्त कर्षा विकास सम्मान्य स्थान स्थान क्षणिक स्थान may have been covered under such a plan. Exceptions. 17. Procedioles: Final, noncelolass directions, 4 may, securities, 4 accepted; money on my months land contract, stranging in time. essumed by Buyer, will all be adjusted to the data of closing. 16. Closing: 17 agreeable to hold perfect, the bails only to cicked as about as documents are ready, but not later than 6 - 30 - 06. 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Dpm.on the _ ____ day after completion of the closing of the sale, during which time Seller will have the privilege to occupy the property and hereby agrees to pay the Buyer \$________as an occupancy fee for this period payable at closing, WiTHOUT PRORATION. If Seller fails to deliver possession to Buyer on the agreed date, Seller shall become a tenant at sufference and shall pay to Buyer as liquidated damages \$ actual reasonable attornays fees incurred in removing the Seller from the property. _ per day plus all of the Buyer's If Seller occupies the property after closing, Seller will pay all utilities during such occupancy. Buyer will maintain the structure and mechanical systems at the property. However, any repairs or replacements necessitated by Seller's misuse, abuse, or neglect of any portion of the property will be Seller's responsibility and expense. On the agreed delivery data, Seller shall deliver the property free of trash and debris and in broom-citian condition, shall remove all personal property (unless otherwise stated in this or an addiscret written agreement), shall make arrangements for final payment on all utilities, and shall dailyer all keys to Buyer. Exceptions: Subject Property Address/Descriptor COPYRISH, District S & 6 Boards of REALTORS Revision Date 1/05

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20. Good-Faith Dennett: For valuable posside-ties of	West Michigan Regional Purchage Agreement Page 5 of 6
20. Good-Fatth Deposit: For valuable consideration, Buyer giv	tts REALTORS above named until 5:00 (time) on
	written acceptance of this offer and agrees that this offer, when
Drive. If this office is and appeared to Tel.	I faith, to be held by selling Broker, and to such so the such
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oraposition; if a party objects and no mutually agreeable disposition	's notice, they will be deemed to have agreed to Broker's proposed in can be negotiated. Broker may deposit the funds by interpleader
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21. Professional Advisor: Server between profession Server and Server advisor relating to this transaction. Broker does not make any reprincipal effect of this transaction. Buyer further acknowledges that Ri	Grant Charl. 1988. Schools (1989-1991) april 1989 separate data profit uniques.
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25. Buyer's Acknowledgment: Buyer hereby acknowledges receipt of a	CYCN of this Micrograms
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### ADDENDUM TO WEST MICHIGAN REGIONAL PURCHASE AGREEMENT

This is an Addendum to the West Michigan Regional Purchase Agreement dated May 31, 2005 (the "Agreement"), between Peter Westermann ("Buyer"), and John A. Porter, Chapter 7 Trustee in the matter of James Gerard Stelter, case no. 05-18979 jcs, United States Bankruptcy Court for the Western District of Michigan, and not individually ("Seller") with reference to the property located 8700 Conservancy NE, Ada, Michigan 49301 (the "Property").

The Property is part of the bankruptcy estate being administered by John A. Porter (the "Trustee") in the matter of James Gerard Stelter, Debtor, case number 05-18979 jcs, United States Bankruptcy Court for the Western District of Michigan (the "Court"). The Trustee agrees to sell the Property to the Buyer, subject to the following conditions:

- (a) The Trustee is signing this Agreement as trustee in the above bankruptcy case, and not individually.
- (b) Title to the Property will be transferred by the Trustee's execution of a "trustee's deed."
- (c) Sale of the Property, including all improvements and fixtures, shall be made on an "AS IS, WHERE IS" basis as of the date of closing without representation or warranty, express or implied, of any kind, nature, or description, including, without limitation, any warranty by description or of merchantability, habitability, usability, or of fitness for any purpose. The Trustee shall not be required to inspect or test or report on the condition of the Property, or the operability of the Property, or the existence of any defects in the Property.
- (d) The Trustee reserves the right to recommend the rejection of the Agreement, if the Agreement later proves insufficient to yield a reasonable net recovery to the estate, or if a higher bid is received at the hearing on confirmation of the sale.
- (e) The sale shall be closed on the later of (1) the date specified in the Agreement or (2) within ten (10) days following approval by the Court of the Agreement, as amended by this Addendum. Trustee agrees to promptly request approval by the Court of the sale.
- (f) The Trustee shall have no obligation to sell the Property unless proceeds received from sale of the Property are sufficient to pay all valid and non-avoidable liens and encumbrances against the Property, the allowed exemptions (if any) claimed by the Debtor, all closing costs (including but not limited to real estate commissions), and the interest of Debtor's spouse in the Property.

Dated:	BUYER:
	Peter Westermann

Dated:_____(0///06

SELLER:

John A Porter, Chapter 7 Trustee in the matter of James Gerard Stelter, Debtor, case number 05-18979 jcs, United States Bankruptcy Court for the Western District of Michigan, and not individually

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## **BUYER AGENCY** ADDENDUM TO BUY AND SELL AGREEMENT



Walled 1	(Selling Broker)	Date: 5:31-96
Rick Page	(Selling Agent) BUY AND SI	ELL AGREEMENT NO.
THIS ADDENDUM is attached to	and made a part of a certain Buy and Sell Agr	
parties dated 5-71-4	6 covering real estate located in	connect permant the midelafilled
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commonly known as	100 americancy O	St/Ave. and described as
(LUC , WORKERMENT,) TO THE O	ONTRARY,	/E-REFERENCED BUY AND SELL AGREEMENT
AGENCY DISCLOSURE: The	Seller acknowledges that	Gency agreement with the Buyer and are agents
specifically rejected the position	the Seller or the Listing Broker/Agent will be don of sub-agent to the Listing Broker.  Broker.	ne Seller. All information provided to the Selling lieclosed to the Buyer. The Selling Broker has
Fee Agreement 1: On bei	salf of the Buyer, the Seller agrees to pay the Sel	ling Broker a fee at the closing. The fee shall be
3-7	The Seller:	agrees that, as a convenience, the fee has been
☐ Fee Agreement 2: The Se	nd the Salling Agent shall not be deemed agents	has agreed to pay Woodland Regity, as
The Buyer has included as	agency ree of% which woodland Re	alty accepts as part of its total compensation.
Resity on hehalf of the Ren	excusiones 76 in electrones control of	t which the Setter agrees to credit to Woodland % will allow the Buyer to fulfill their
CONTECTION agreement with	Woodland Realty. Dise to bank financing and of all agreement between the Buyer and Woodland	ther considerations, the Suyer requests that the Realty and refrain from proposing fee changes
Both parties understand tha	it the agreement of Seller to provide the addition	nal credit to the Buyer at closing:
A. shall in no way affect	the compensation which is to be paid by Selter	to the Seller's agent; and
B. is not an intention on the Seller's agent to \	the part of the Buyer or Woodland Realty to me	odify the offer of compensation being made by
OTHER TERMS:		
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finess/Sales Agent;	BUYER:	Dete: 5/3:/06
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Strang/Colon Asset		Date:
/itness/Sales Agent:	SELIER John A. Porter, Chap	ter 7 Trustee in the matter of Jan
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· ·	the Western District	of Michigan, and not individually

## WEST MICHIGAN REGIONAL ADDENDUM TO PURCHASE AGREEMENT

MLS	5#	 ne)
Sell	ing Office Woodland REALTOR® Phone Fax	<u>.</u>
List	ing Office Prudental , REALTOR® Phone Fax	
1.	Addendum to Purchase Agreement #datedcovering property	at
		····
2.	This Addendum shall be an integral part of the Purchase Agreement, which is amended as follows:	
	- Buyers inspection period	
	to be experienced through	
	June 13,2006	<del></del>
		<del></del>
		<del></del>
		<u>-</u>
3.	The D Seller D Buyer (check one) gives the above-named REALTOR® days to obtain the wracceptance of this Addendum to the Purchase Agreement. If accepted, this Addendum will constitute a binding change to Purchase Agreement.	itten the
4.	RECEIPT IS ACKNOWLEDGED BY BUYER of a copy of this Agreement.	
	Date X Bu	
	(Note: Please sign as you wish your name to appear on documents.)	y <b>er</b> :
	Witness X Bu	,
	(Note: Please sign as you wish your name to appear on documents.)	yer
5.	RECEIPT IS ACKNOWLEDGED BY SELLER of a copy of this Agreement.	
	Date 4906 × 100 Se	ller
	Timothy Hillegonds, attorney for J	ohn A. Porter
	Witness chapter 7 trustee in the matter of X (Note: Please sign as you wish your name to appear on documents.)	James G. N <b>er</b>
	Stelter, case no. 05-18979 jcs, US	Bankruptcy ·
	Court for the Western District of and not individually	Michigan,
	est Michigan REALTOR® Boards	
	1#23 Rev. Date 1/2002 TAUTHORIZED FOR USE AFTER DECEMBER 31, 2004	